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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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DATE: MAY 31 2011 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research scientist / civil and environmental engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, the petitioner has not established his eligibility for the benefit sought. Specifically, the question is not whether engineers benefit the United States. Rather, at issue is whether the proposed benefits of the petitioner's employment in the United States outweighs the national interest inherent in the alien employment certification process such that the petitioner should be exempt from that process.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. from the University of Wisconsin-Madison. While counsel correctly notes that the director listed the wrong degree from the wrong school, the director did not contest that the petitioner has the requisite advanced degree. The remaining discussion of the evidence relates to the petitioner. Thus, the director's incorrect reference to the beneficiary's education is harmless error.

The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The use of the term "prospective" is meant to require future contributions by the alien and is not intended to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The AAO concurs with the director that the petitioner works in an area of intrinsic merit, civil and environmental engineering, and that the proposed benefits of his work, improving the efficiency of the U.S. transportation system, would be national in scope. It remains, then, to determine whether

the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, U.S. Citizenship and Immigration Services (USCIS) generally does not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, the AAO notes that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner submitted evidence of his membership in the American Society of Civil Engineering (ASCE) and the Construction Institute (CI). Professional memberships are one type of evidence that a petitioner may submit to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(E). Because exceptional ability, by itself, does not justify a waiver of the job offer/labor certification requirement, arguments hinging on professional memberships, while relevant, are not dispositive to the matter at hand. *Id.* at 222.

The petitioner also submitted four journal articles. In response to the directors' request for additional evidence, the petitioner submitted the anonymous review of one of his articles recommending publication and a single citation. On appeal, counsel asserts that the journals have low acceptance rates and that the main evaluation criterion is how the work has "made a significant impact on the field." Counsel concludes the publication of these articles alone demonstrates the petitioner's impact on his field. Finally, counsel asserts that citations can take several years to appear. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980).

Counsel does not explain how a journal can require that a manuscript submitted for publication already have made an impact prior to publication. Research that has yet to be disseminated in the field is unlikely to have already had an impact. The review of the beneficiary's submission to the *Journal of Transportation Engineering* is a cover sheet only and, while listing the top ranking, does not contain the actual critique. The review of the beneficiary's submission to the *Canadian Journal of Civil*

Engineering does not suggest that the reviewer found the submission to have already impacted the field. Rather, the review stated that the beneficiary's "attempt" to address the subject of construction contractor evaluation using an objective approach "should be encouraged." The reviewer further suggests that the research "is suitable for launching more research" but does not suggest it has already served as the foundation for subsequent research. The review concludes: "The paper and future spin-off applications will be of great service to construction managers." The reviewer references no examples of how it is already a service to construction managers. Moreover, the petitioner's 2005 article in the *Canadian Journal of Civil Engineering* cites several articles published in 2004. Thus, it does not necessarily take five years from publication to citation as stated by counsel on appeal.

The citation, by a researcher in Kentucky, cites a 1998 article and the petitioner's 2004 article as examples of the application of panel data in predicting the performance of infrastructural facilities. On page 91, however, the authors reveal that they actually used [redacted] based estimation method reported in 1991. Thus, this citation is not evidence of independent researchers using the petitioner's model.

The remaining evidence consists of reference letters. Dr. [redacted] the beneficiary's Ph.D. advisor at the University of Wisconsin-Madison, lists the petitioner's research interests and concludes: "I believe that his research is key to improving the efficiencies of our transportation system." USCIS need not accept primarily conclusory assertions.[1] Dr. [redacted] does not provide examples of specific accomplishments and explain how they have impacted the field. Instead, he states that the petitioner's skills "are critical" for U.S. competitiveness and that the United States "has a high need for qualified engineers." Any objective qualifications necessary for the performance of the occupation can be articulated in an application for alien employment certification. *NYSDOT,* 22 I&N Dec. at 220-21. Moreover, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

In a subsequent letter, Dr. [redacted] asserts that the petitioner is the first researcher to apply panel data analysis and modeling techniques to highway pavement research. Dr. [redacted] continues:

> Because this modeling technique will give significant benefits to many highway pavement researches [sic], he will be one of the significant research scientists who [are] contributing to highway pavement research areas in national impact level.

This statement, presuming a future impact, is highly speculative. Dr. [redacted] next discusses the petitioner's dynamic prediction model for as-built roughness, a factor when measuring highway pavement performance. Dr. [redacted] notes that the petitioner published this research, which has an 85 percent prediction accuracy. Once again, however, Dr. [redacted] merely predicts that this model "will be significantly beneficial to many researches [sic] sponsored by federal and state highway agencies." He provides no examples of federal or state sponsored research actually using the petitioner's models.

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[1] *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Dr. [redacted], another professor at the University of Wisconsin-Madison, concludes that the petitioner "contributed significantly in the area of highway construction with [the] quality prediction model he developed." As stated above, USCIS need not accept primarily conclusory assertions.[2] Dr. [redacted] asserts generally that the petitioner developed "a remarkable dynamic model for highway pavement" but provides no examples of any other engineer using this model.

[redacted], Senior Project Manager for [redacted], asserts that the beneficiary was a "dedicated member" of Mr. [redacted] construction management staff in 2002 and 2003. Mr. [redacted] explains that the project involved the $50 million rehabilitation of the dispatch communication centers being constructed for the New York City Fire Department. Mr. [redacted] states:

> As Office Engineer [the petitioner] was personally responsible for the establishment of the policies and procedures for the processing and maintaining of all projects records as well as coordinating the submission and approval of all required Contractor shop drawing to the Architect Engineer. [The petitioner] also assisted in the preparation and updating of the project master schedule.

While Mr. [redacted] concludes that the petitioner performed his assigned duties above expectations, these duties appear to have involved record management and scheduling rather than innovative engineering designs. Mr. [redacted] does not suggest this project utilized the petitioner's model.

[redacted], Deputy Program Director for the New York City Department of Design and [redacted], asserts that the petitioner worked for the company that the department hired as a consultant for a school renovation program in 2002. Mr. [redacted] explains that the projects were challenging and states that the petitioner "helped to closeout many projects by resolving various engineering issues." Simply completing an engineering assignment is not evidence of the petitioner's influence on the field as a whole.

Dr. [redacted], an assistant professor at San Jose State University, states:

> Personally, I have also reviewed [the petitioner's] journal papers in order to perform my funded research project. Although I decided not to use panel data analysis due to no expertise in our research team, I found that [the petitioner's] methodology was very useful to find the significant factors that affect pavement performance and I adopted his methodology for my research.

Dr. [redacted] does not explain what methodology he used if not the petitioner's panel data analysis model. Dr. [redacted] also fails to submit a report or manuscript citing the petitioner's research. This single ambiguous anecdote cannot demonstrate the petitioner's influence on the field as a whole.

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[2] *1756, Inc.*, 745 F. Supp. at 15.

[redacted], an engineer at the New York State Department of Transportation, states that the petitioner's "researches [sic] have implemented outstanding prediction models for highway pavement performance using an advanced analytical method such as Panel Data Analysis and Modeling techniques." Mr. [redacted], however, does not suggest that the department is adopting the petitioner's models and techniques.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of contributions without providing specific examples of how those innovations have influenced the field. Merely repeating the legal standards does not satisfy the petitioner's burden of proof.[3] The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

Ultimately, the petitioner is an engineer who developed a model while a doctoral student that has yet to be implemented beyond his own research. While the petitioner has performed his engineering assignments satisfactorily, the record lacks evidence that the petitioner has qualifications that cannot be articulated on an application for alien employment certification. Thus, he has not explained why it is necessary to waive that process in the national interest.

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[3] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.